

## **PROPOSED REGULATION AMENDMENTS RELATED TO PROPOSITION 103 HEARING PROCEDURES**

### **§2646.2 Certification of Questions to the Commissioner**

a) In any hearing before an administrative law judge, the administrative law judge may, on the motion of any party or on his or her own motion, certify a question to the Commissioner for determination during the proceedings before the administrative law judge.

(b) Certification shall be limited to matters that either (1) apply to numerous pending hearings; (2) are substantially in doubt and are so fundamental to the instant proceeding that absent certification there is a substantial risk that hearing time would be wasted; or (3) in the opinion of the administrative law judge, require immediate determination by the Commissioner in the interests of justice.

(c) The Commissioner may decline to answer the certified question without specifying any grounds. Denial of certification without reaching the merits is without prejudice to the party's right to raise the matter before the administrative law judge or the Commissioner.

~~(d) Nothing in this section limits the discretion of the Commissioner to issue an order giving directions on a matter pending before an administrative law judge~~

NOTE: Authority cited: Sections 1861.05 and 1861.055, California Insurance Code, *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.01 and 1861.05, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989); *Fireman's Fund Insurance Companies. v. Charles Quackenbush* (1997) 52 Cal. App.4<sup>th</sup> 599, 607.

### **§ 2648.4 Complete Application**

(a) ...

(b) Notwithstanding the completeness determination, the Commissioner may later require the submission of relevant underwriting rules and other relevant documents from an applicant in order to perform a complete analysis of the application.

NOTE: Authority cited: Sections 1861.05 and 1861.055, California Insurance Code. Reference: Sections 1861.05, 1861.07, and 1861.055, California Insurance Code.

## **§2651.1. Definitions**

The following definitions shall apply to Subchapter 4.9.

(a) “Administrative ~~Law~~ Hearing Bureau” means that office within the office of the Commissioner at 45 Fremont Street, 22nd Floor, San Francisco, CA 94105 and, except where otherwise specified in this subchapter, designated for receipt of all pleadings filed pursuant to this subchapter.

(b) “Applicant” means the insurer presenting, on the form prescribed by the Commissioner and specified in section 2648.4, application to change any rate pursuant to California Insurance Code section 1861.05(b).

(c) “Application” means the form prescribed by the Commissioner and specified in section 2648.4, together with all supporting information included with that form, which every insurer seeking to change any rate pursuant to California Insurance Code section 1861.05(b) must provide.

(d) “Day”, unless otherwise specified in these regulations, means a calendar day. “Business days” include all days except Saturdays, Sundays, and any holiday set forth in California Government Code section 6700.

The time within which any pleading may be filed or served shall exclude the first day and include the last day; however, when the last day falls on a Saturday, Sunday or holiday the time computation shall exclude that day and include the next business day.

(e) “Filing” means the act of delivery of a paper pleading to the Administrative ~~Law~~ Hearing Bureau. An original and four copies of each pleading shall be filed with the Administrative ~~Law~~ Hearing Bureau. A specific pleading may be filed and/or served by facsimile or electronic transmission only when authorized by the administrative law judge.

(f) “Party” means the insurer whose rates are the subject of the proceeding, any person whose petition to intervene in the proceeding has been granted pursuant to section 2661.3(g), and the Department.

(g) “Pleading” means any petition, notice of hearing, notice of defense, answer, motion, request, response, brief, or other formal document filed with the Administrative ~~Law~~ Hearing Bureau pursuant to this subchapter. The original of each pleading shall be signed by each party or the party's attorney or representative.

(h) “Proceeding” means any action conducted pursuant to Article 10 of Chapter 9 of Part 2 of Division 1 of the California Insurance Code, entitled “Reduction and Control of Insurance Rates.”

(i) "Service" means to provide a copy of a pleading to every other party in the proceeding in conformity with California Code of Civil Procedure sections

1011 and 1013. When a party files a pleading, the party shall concurrently serve that pleading on all other parties in the proceeding.

All filed pleadings shall be accompanied by an original declaration of service in conformity with California Code of Civil Procedure sections 1011 and 1013. All served pleadings shall be accompanied by a copy of the declaration of service. An employee of a party may sign a declaration of service.

~~A specific pleading may be filed and/or served by facsimile transmission only when authorized by the administrative law judge for good cause shown.~~

A sample declaration of service form can be found in section 2623.9.

(j) "Settlement" means an agreement among some or all of the parties to a proceeding on a mutually acceptable outcome to the proceeding.

(k) "Stipulation" means an agreement among some or all of the parties to a proceeding on the resolution of any issue of fact or the applicability of any provision of law material to the proceeding.

(l) "Submit" means the act of delivery of a pleading to the Rate Enforcement Bureau.

NOTE: Authority cited: Sections 1861.05 and 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.05(c), 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

### **§2652.5. Place of Filing**

Unless otherwise directed, all pleadings filed pursuant to this subchapter shall be filed with the Administrative ~~Law~~ Hearing Bureau, 45 Fremont Street, 22nd Floor, San Francisco, CA 94105. However, petitions for hearing shall be submitted to the California Department of Insurance, Rate Enforcement Bureau, 45 Fremont Street, 21st Floor, San Francisco, CA 94105, and shall not be filed with the Administrative ~~Law~~ Hearing Bureau.

(b) Filing and service shall be accomplished by 4:30 p.m. local time on any due date.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32

Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.05(c), 1861.055, 1861.07, 1861.08, and 1861.10(a), California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

## **§2655.1. Discovery**

(a) The Department may include a discovery request with a notice of hearing. Within ten (10) days following the service of a discovery request, the insurer shall deliver to the Department and any interveners copies of all items requested that meet the standards of discoverable items in Government Code section 11507.6, liberally construed. Alternatively, upon mutual agreement of all parties and interveners: 1) written documents may be converted into another mutually agreeable format, such as electronic or magnetic, and made readily available, or 2) a depository of original items may be used in place of delivery of copies, but the depository shall be open beyond regular business hours upon request of a party or intervener. The insurer shall have an ongoing duty to produce additional items pursuant to whichever method is agreed upon as new items become relevant. The insurer and any intervener may also request discovery concurrently with the filing and service of its initial pleading. A The written response to any discovery request to the Department or any intervener shall be served on the requesting party within ~~twenty (20)~~ ten (10) days of service of the discovery request.

(b) This written response shall, separately for each item in the discovery request, include a copy of each document which is being produced in response to the discovery request, or an objection that includes the specific basis for the objection. A response shall also contain a list specifically identifying the items not produced that are responsive to the request, in a form that can be read in connection with the specifically stated objections: for each requested item that is not made available. The withholding party shall specify precisely why the stated objection applies to the specific item withheld.

When a party withholds information otherwise discoverable by claiming it is privileged, that party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the specifically asserted privilege or protection. Simultaneously, the withholding party shall also draft and provide a confidentiality agreement to the other parties and the administrative law judge if a confidentiality agreement can protect the interest in nondisclosure.

Nothing in this section shall require any party to disclose information contained in a document which is privileged from disclosure by law or otherwise made legally confidential or protected as an attorney's work product.

~~(b)~~ (c) Any party claiming that a request for discovery has not been complied with shall, within ~~ten (10)~~ five (5) business days of receipt of the responses referred to in (b) above,

meet and confer with the party from whom discovery is sought to attempt to resolve the discovery dispute.

~~(e)~~ (d) Any party claiming that a request for discovery has not been complied with following the meet and confer session shall, within five (5) business days of the meet and confer session, file and serve a motion to compel discovery accompanied by a copy of the original discovery request and response thereto. The motion to compel discovery shall contain a statement specifying why the requested information is sought, and include facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The party from whom discovery is sought shall file and serve any additional response within five (5) business days of service of the motion. The administrative law judge shall set a hearing on the motion for a time within ten (10) business days after filing of the response. At or before the commencement of the hearing, the administrative law judge shall inform the parties of his or her tentative ruling on the motion. The administrative law judge shall issue a decision on the motion to compel discovery within five (5) business days of the date of the hearing on the motion to compel discovery.

~~(d)~~ (e) Nothing in this section shall prohibit the administrative law judge, in appropriate circumstances, from ordering in camera inspection of documents or entering a protective order for documents not subject to California Insurance Code section 1861.07. Nothing in this section shall prohibit the administrative law judge from extending the time frame for discovery when the interests of justice so require.

~~(e)~~ (f) Any party who disagrees with a decision of the administrative law judge on a motion to compel discovery and desires review of the decision may, within five (5) business days of the date of service of the decision regarding discovery, request the Commissioner to review the discovery decision of the administrative law judge. The request shall be provided to the San Francisco office of the Commissioner, 45 Fremont Street, 23rd Floor, San Francisco, CA 94105 and served on all parties and the administrative law judge. The request shall specify why the party believes the decision of the administrative law judge is in error. The Commissioner shall review the decision of the administrative law judge, as well as all pleadings filed in connection with the motion to compel discovery and the transcript of the hearing on the motion to compel discovery, and issue a decision within fifteen (15) days of receipt of the request to review. The hearing schedule shall be stayed during the time of the Commissioner's review.

~~(f)~~ (g) All discovery requests, responses, and/or motions to compel discovery shall be made in good faith, and the administrative law judge shall strike any discovery request, response, and/or motion to compel intended only to delay, harass, or intimidate. No discovery request or response shall be stricken except on written request of a party, filed no later than five (5) business days after service of the discovery request, response, or motion to compel discovery and following notice and an opportunity to be heard. The hearing shall be held no later than ten (10) business days after filing of the request. Any party may file a written response to a request within five (5) business days of filing of the request.

~~(g)~~ (h) Unless a party files a motion to compel discovery, discovery requests, responses thereto, and lists of items not produced shall not be filed with the Administrative Law Hearing Bureau.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08(e), California Insurance Code, Sections 11507.6, and 11507.7, California Government Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

#### **§2655.6. Prepared Testimony**

(a) Prepared direct testimony, in narrative statement or question and answer format, of each direct witness expected to be called to testify by the applicant in a proceeding, shall be filed and served on all parties at least ~~thirty (30)~~ forty (40) business days before the first day of the evidentiary hearing. Prepared direct testimony, in narrative statement or question and answer format, of each direct witness expected to be called to testify in a proceeding by any party other than the applicant, shall be filed and served on all parties no later than ~~fifteen (15)~~ twenty (20) business days after service of the applicant's prepared direct testimony. Prepared direct testimony shall be signed under penalty of perjury under the laws of the state of California. Expert witness testimony shall be accompanied by the witnesses' curriculum vitae and list of authored or co-authored publications. Additionally, any documents reviewed by the expert for purposes of testifying in the specific case that were not previously provided to the other parties shall be produced with the testimony.

(b) Within ~~ten (10)~~ five (5) business days of service of any prepared direct testimony, any party may file a motion to strike all or part of the testimony. The motion shall state the specific page(s) and line(s) to which the party is objecting, and the specific legal authority for the objection. Within five (5) business days of service of a motion to strike, the party filing the prepared direct testimony may respond to the motion to strike. A hearing on any motion to strike shall be held within five (5) business days of service of any response to the motion to strike. At or before the commencement of the hearing on the motion to strike, the administrative law judge shall inform the parties of his or her tentative ruling on the motion. The administrative law judge shall rule on the motion to strike no later than two (2) business days after the hearing on the motion to strike. Any testimony not objected to and any testimony not stricken, together with exhibits referenced in that testimony, shall be deemed admitted.

(c) If rebuttal prepared testimony is allowed, motions to strike may be made orally and ruled upon immediately in order to expedite the proceeding.

~~(e)~~ (d) At the evidentiary hearing, the person whose prepared testimony is being offered shall be available for cross-examination by all parties.

~~(d)~~(e) Prepared testimony of more than twenty (20) pages shall contain a subject index.

~~(e)~~(f) This section is not intended to replace the provisions of Government Code section 11514.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, Sections 11507.6, 11511, and 11513, California Government Code, Section 801(b), California Evidence Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

#### **§2655.5. Additional Evidence.**

(a) The administrative law judge may require the production of further evidence on any issue until the record is closed. If the administrative law judge determines that specific documentary evidence is necessary as a part of the record, the administrative law judge shall set a deadline for filing, reserving exhibit numbers therefor. Copies of all documents produced shall be served on all parties.

(b) If the administrative law judge requires the production of further evidence, that evidence shall be provided no later than ten (10) days from the date the administrative law judge notifies the party from whom the evidence is sought that additional evidence is required.

(c) Any objections to admitting the evidence produced upon the administrative law judge's order shall be filed no later than five (5) days after the evidence is served.

~~(e)~~ (d) Unless ordered by the administrative law judge, ~~upon written motion for good cause shown, in no event shall~~ evidence other than matters that can be officially noticed shall not be provided after the close of the evidentiary hearing.

~~(d)~~ (e) In no event shall the record close more than fifteen (15) days ~~from the filing of reply briefs~~ after oral argument.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824

(1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

## **§2655.10 Official Notice**

No party shall file a Request for Official Notice after it files its ~~reply brief~~ opening brief as authorized by section 2657.1(d). Objections to official notice requests shall be filed no later than with reply briefs; any written refutation shall accompany the objection. If the administrative law judge determines, without a request, to take official notice of a matter, notice shall be given to the parties, who shall have five (5) days to offer objections or written refutation.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, Section 11515, California Government Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

## **Article 8. Stipulations and Settlements**

### **§2656.1. Proposal of Stipulations or Settlements**

(a) Parties may stipulate to the resolution of an issue of fact or the applicability of a provision of law material to a proceeding, or may agree to settlement on a mutually acceptable outcome to a proceeding, with or without resolving material issues.

(b) Notice of the stipulation and a copy of the stipulation shall be served on any intervenor at the time of filing. However, no party to a proceeding pending before the Commissioner shall compensate or agree to compensate an intervenor, and no intervenor shall receive or agree to receive compensation from any party in connection with a proceeding pending before the Commissioner, other than a compensation award approved by the Commissioner in accordance with Article 14 of Subchapter 4.9. No agreement concerning the merits of any matter pending before the Commissioner may be conditioned upon the payment of compensation to an intervenor.

~~(b)~~ (c) Stipulations and settlements shall be filed with the administrative law judge for proposed acceptance or rejection. When a stipulation or settlement is filed with the administrative law judge, it shall also be served on all parties. If a stipulation dispositive of the case or a settlement is proposed prior to the taking of any testimony, the parties supporting the stipulation or settlement shall file and serve supporting declarations



indicating the reasons that the settlement or stipulation is fundamentally fair, adequate, reasonable and in the interests of justice. The administrative law judge shall reject any stipulation or settlement which includes an agreement regarding intervenor fees.

~~(e)~~ (d) Stipulations shall be limited to the issues in the proceeding and shall have no precedential value for future proceedings.

~~(d)~~ (e) A settlement or stipulation involving an agreed-upon rate change shall list, for each applicable subline and overall, the California written premium for the prior calendar year, the rate change proposed in the rate application, and the agreed-upon rate change.

~~(e)~~ (f) Any party may discuss stipulations or settlement with any other party without involving all parties.

~~(f)~~ (g) Any party objecting to a proposed settlement or stipulation may, within five (5) days of service of the proposed settlement or stipulation, file a written objection and may request a hearing before the administrative law judge on the proposed settlement or stipulation. When a hearing is requested, the administrative law judge shall hold a hearing on the objections within ten (10) business days of the filing of the request.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

## **§2656.2. Rejection of Stipulation or Settlement**

(a) The administrative law judge shall reject a proposed stipulation or settlement whenever, in his or her judgment, the stipulation or settlement is not in the public interest and is not, taken as a whole, fundamentally fair, adequate, and reasonable. Upon rejection, the administrative law judge may propose acceptable alternative terms to the parties and allow the parties reasonable time to consider those terms. Any party may, in writing and within three (3) days of the administrative law judge's rejection of a proposed stipulation or settlement, request the Commissioner's review of that rejection. A copy of any request shall be filed with the Administrative ~~Law~~ Hearing Bureau.

~~(b) The terms of a stipulation or settlement adopted by the administrative law judge shall be included in any proposed decision provided to the Commissioner.~~

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48

Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

### **§2656.3. Adoption of Stipulation or Settlement**

(a) Adoption of a stipulation or settlement by the administrative law judge alone does not constitute approval of, or precedent regarding, any principle or issue in the proceeding or in any future proceeding.

(b) The terms of a stipulation or settlement adopted by the administrative law judge shall be included in any proposed decision provided to the Commissioner.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

### **§2656.4. Inadmissibility.**

(a) Discussions, admissions, concessions or offers to stipulate or settle, whether oral or written, made during any negotiation or settlement conference are confidential and inadmissible for any purpose in any proceeding.

(b) If a stipulation or settlement is not adopted by the administrative law judge, no evidence regarding the terms of the proposed stipulation or settlement shall be admissible for any purpose in any proceeding.

(c) The Commissioner's approval of an insurer's application or amended application without a hearing and without specific findings of fact and determinations of issues shall not constitute approval of or precedent regarding any principle or issue in any other proceeding. ~~Information of or regarding approval of another insurer's application is not discoverable or admissible for any purpose in any other proceeding.~~

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216,

281, 32 Cal.Rptr.2d 807, 847 (1994), *RLI Insurance Co. Group v. Superior Court*, 51 Cal.App.4<sup>th</sup> 415 (1996).

### **§2658.1 Submission of Proceeding**

A proceeding shall stand submitted ~~after the taking of evidence, the filing of briefs, and the presentation of any oral argument~~ when the record closes.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, Section 11517, California Government Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

## **Article 11. Commissioner's Decision and Petitions for Reconsideration**

### **§ 2659**

(a) Within 100 days of receipt by the Commissioner of the administrative law judge's proposed decision, the Commissioner may: (a) adopt the proposed decision in its entirety; (b) reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision; (c) make technical or other minor changes that do not affect the factual or legal basis of the proposed decision and adopt the clarified version as the decision; or (d) reject the proposed decision and issue a final decision based upon the record, including the transcript. However, if the Commissioner determines that more evidence is necessary, he or she may reject the proposed decision within 100 days, and either remand the case to an administrative law judge or personally conduct an evidentiary hearing. If the Commissioner rejects the proposed decision and needs additional evidence, a scheduling conference for the new hearing, whether presided over by an administrative law judge or the Commissioner, shall be conducted within 30 days from the rejection of the administrative law judge's proposed decision. If the Commissioner takes no action within 100 days of receipt of the proposed decision, the proposed decision shall be deemed adopted in its entirety.

(b) If the case is remanded to an administrative law judge, he or she shall reopen the record to take additional evidence and argument. Within thirty days after the record is closed again and the case re-submitted, the administrative law judge shall prepare a revised proposed decision based on the original record as well as the evidence and the argument from the remand proceeding. The provisions of subdivision (a) shall apply to the revised proposed decision. If the Commissioner personally conducts an additional

evidentiary proceeding, the Commissioner's final decision shall be issued within 100 days from receipt of the transcript of the additional evidentiary hearing.

(c) Thirty days after the receipt of the proposed decision, a copy of the proposed decision shall be filed by the Department as a public record and a copy shall be served on each party and each party's representative. The decision of the Commissioner shall be filed immediately by the Department as a public record and a copy shall be served on each party and each party's representative.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, Section 11517, California Government Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

#### **§2659.1 Provided to the Commissioner—Petitions for Reconsideration**

Petitions for reconsideration of the Commissioner's final decision shall be provided, within the time set forth in Government Code section 11521, to the Commissioner, filed with the Administrative Law ~~Hearing~~ Bureau and served on all parties.

NOTE: Authority cited: Section 1861.055, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055 and 1861.08, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

#### **New section Article 12. Judicial Review**

##### **§2660 Served on the Administrative Hearing Bureau**

Any party petitioning for trial court or appellate review of a Commissioner's decision arising from a rate hearing shall serve on the Administrative Hearing Bureau a copy of the petition and the final decision from each reviewing court.

NOTE: Authority cited: Section 1861.055, 1861.09, and 1858.6, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32

Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.055, 1861.09, and 1858.6, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

**Renumber Current Article 12 to Article 13 and Current Article 13 to Article 14.**

**§2661.3 Procedure for Intervention in a Rate Hearing**

(a)-(d) ...

(e) A Petition to Intervene shall be filed with the Administrative ~~Law~~ Hearing Bureau, ...

(f) ...

(g) The administrative law judge shall rule on the Petition to Intervene within 20 days of its filing with the Administrative ~~Law~~ Hearing Bureau.

NOTE: Authority cited: Section 1861.10, California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian, et al.*, 48 Cal.3d 805, 824 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994). Reference: Sections 1861.10(a) and 1861.10(b), California Insurance Code, *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, 48 Cal.3d 805 (1989), *20th Century Insurance Company v. John Garamendi*, 8 Cal.4th 216, 281, 32 Cal.Rptr.2d 807, 847 (1994).

**CEA RULES**

**§2697.3. Ratemaking**

(a) –(c) ...

(d) For purposes of subdivision (c), extraordinary circumstances include the following:

(1) Rate change application hearings commenced during the 180-day period provided by subdivision (c). If a hearing is commenced during the 180-day period, the rate change application shall be deemed approved upon expiration of the 180-day period or 60 days after the close of the record of the hearing, whichever is later, unless disapproved prior to that date.

(2) Rate change applications that are not approved or disapproved within the 180-day period provided by subdivision (c) as a result of a judicial proceeding directly involving the application and initiated by the applicant or an intervenor. During the pendency of the judicial proceedings, the 180-day period is tolled, except that in no event shall the Commissioner have less than 30 days after conclusion of the judicial proceedings to approve or disapprove the application. Notwithstanding any other provision of law, nothing shall preclude the Commissioner from disapproving an application without a hearing if a stay is in effect barring the Commissioner from holding a hearing within the 180-day period.

(3) The hearing has been continued pursuant to Section 11524 of the Government Code. The 180-day period provided by subdivision (c) shall be tolled during any period in which a hearing is continued pursuant to Section 11524 of the Government Code. A continuance pursuant to Section 11524 of the Government Code shall be decided on a case-by-case basis. If the hearing is commenced or continued during the 180-day period, the rate change application shall be deemed approved upon the expiration of the 180-day period or 100 days after the ~~case is submitted~~, the record is closed, whichever is later, unless disapproved prior to that date.

(e) Public notice required by this Section shall be made as required by Insurance Code Section 1861.06.

(f) With the exception of proprietary materials and documents owned or licensed by third parties, all information the Authority provides to the Commissioner pursuant to this Section shall be available for public inspection, and the provisions of Section 6254(d) of the Government Code and Section 1857.9 of the Insurance Code shall not apply to that information.

(g) –(j) ...

NOTE: Authority cited: Sections 1861.05, 1861.06, 1861.10, 10089.11(d), 10089.40 and 12921, California Insurance Code; and *CalFarm Insurance Company, et al. v. George Deukmejian et al.*, (1989) 48 Cal.3d 805, 771 P.2d 1247, 258 Cal.Rptr. 161. Reference: Sections 1857.7, 1857.9, 1864, 10089.11(a) and 12921, California Insurance Code.